

United States District Court
Middle District of North Carolina

Fenix Flashlights LLC

Plaintiff

v.

Tacbeam LLC

Defendant

Case No. 1:15-cv-140

Brief In Support Of Motion To Consolidate Cases

Defendant Tacbeam moves for an order consolidating this case with *Fenix Flashlights LLC v. Li et al.*, Case No. 1:12-cv-01310-NCT-JEP, Middle District of North Carolina ("*Fenix I*"). A similar motion to consolidate is being filed concurrently in *Fenix I*.

A District Court has discretion to consolidate related cases, as part of its inherent power to manage its docket.¹ The complaint in this case admits that the alleged conduct asserted here is the same alleged conduct for which substantially similar claims were asserted in *Fenix I*.² Even the most cursory comparison of the complaints in these two cases shows that all of Fenix's claims arise out of the same transaction, the same facts, and acts by the same persons.³ Fenix's complaint in this case even acknowledges this.⁴ Tacbeam has already appeared in *Fenix I* and moved to dismiss the complaint in *Fenix I*.⁵

On February 4 and February 6, 2015, Tacbeam's counsel met and conferred with

¹*Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186 (4th Cir. N.C. 1982)

²Request For Judicial Notice (RJN) Exhibit 1 at ¶¶ 1–19

³RJN Exhibit 1 (complaint in *Fenix I*) and Exhibit 2 (complaint in this case)

⁴RJN Exhibit 1 at ¶¶ 1–19

⁵RJN Exhibit 3 (Motion To Dismiss) at page 1

Fenix's counsel in an attempt to work out a stipulation to consolidate these cases. In both phone calls, Tacbeam explained the grounds for consolidation. Fenix refused to stipulate. When Tacbeam asked if any grounds exist for Fenix to oppose consolidation, Fenix refused to articulate any grounds to oppose consolidation. Instead, Fenix's counsel insisted that grounds *might* exist to oppose consolidation and that Fenix would decide whether to oppose consolidation after reviewing this motion. Although Tacbeam again articulated the grounds for consolidation that are asserted in this motion, Fenix persisted in refusing to consent to consolidation.

Date: February 9, 2015

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Counsel for Tacbeam LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for the **Defendant**, and is a person of such age and discretion as to be competent to serve process.

That on February 9, 2015 he served a copy of the attached **Brief In Support of Motion to Consolidate Cases** by placing said copy in a postpaid envelope addressed to the person hereinafter named at the place and addressee stated below, which is the last known address, and by depositing said envelope and its contents in the United States mail at Winston-Salem, North Carolina, and/or by fax/email to the person(s) named below at the fax/email address(es) where indicated below.

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